

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

\* \* \*

ENRIQUE LAGUNAS,

Plaintiff,

v.

NEVADA BOARD OF PRISON  
 COMMISSIONERS, *et al.*,

Defendants.

Case No. 2:18-CV-02039-MMD-CLB

**REPORT AND RECOMMENDATION OF  
 U.S. MAGISTRATE JUDGE<sup>1</sup>**

[ECF No. 35]

This case involves a civil rights action filed by Plaintiff Enrique Lagunas (“Lagunas”) against Defendants Rene Pena (“Pena”), Benedicto Gutierrez (“Gutierrez”), Sonya Carrillo (“Carrillo”), Frank Dreesen (“Dreesen”), Romeo Aranas (“Aranas”),<sup>2</sup> James Dzurenda (“Dzurenda”), Brian Sandoval (“Sandoval”), Barbara Cegavske (“Cegavske”), and Adam Laxalt (“Laxalt”) (collectively referred to as “Defendants”).<sup>3</sup> Currently pending before the Court is Defendants’ motion for summary judgment. (ECF No. 35.) On June 21, 2021, the Court gave Lagunas notice of Defendants’ motion pursuant to the requirements of *Klingele v. Eikenberry*, 849 F.2d 409 (9th Cir. 1988), and *Rand v. Rowland*, 154 F.3d 952 (9th Cir. 1998). (ECF No. 39.) Despite the Court *sua sponte* granting an extension of time, (ECF No. 42), Lagunas has failed to file an opposition to

<sup>1</sup> This Report and Recommendation is made to the Honorable Miranda M. Du, United States District Judge. The action was referred to the undersigned Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and LR IB 1-4.

<sup>2</sup> “Aranas” is erroneously named “Aranus” in Plaintiff’s complaint and the Court’s Screening Order. (ECF Nos. 4, 5.)

<sup>3</sup> The Court dismissed the claims against Dr. Francisco Sanchez without prejudice pursuant to FRCP 4(m). (ECF No. 34.) The Court dismissed defendant Nevada Board of Prison Commissioners, with prejudice, and defendants Howell, Tristan, and Jane and John Does 1-20, without prejudice. (ECF No. 4.)

1 the motion. For the reasons stated below, the Court recommends that Defendants' motion  
2 for summary judgment, (ECF No. 35), be granted.

3 **I. FACTUAL BACKGROUND AND PROCEDURAL HISTORY**

4 Lagunas is an inmate currently in the custody of the Nevada Department of  
5 Corrections ("NDOC") and is currently housed at the Southern Desert Correctional Center  
6 ("SDCC"). (ECF Nos. 4, 5.) On October 22, 2018, proceeding *pro se*, Lagunas filed an  
7 inmate civil rights complaint pursuant to 42 U.S.C. § 1983, ("Complaint"), seeking  
8 injunctive relief, monetary damages, costs and fees, and any other relief for events that  
9 occurred while Lagunas was incarcerated at the SDCC. (ECF Nos. 4, 5.) In accordance  
10 with 28 U.S.C. § 1915A(a), the District Court screened Lagunas's Complaint on  
11 September 30, 2019. (ECF No. 4.) The Court allowed Lagunas to proceed on one claim  
12 for Eighth Amendment deliberate indifference to serious medical needs, and dismissed,  
13 without prejudice, Lagunas's Fourteenth Amendment claim and Lagunas's Americans  
14 with Disabilities Act and Rehabilitation Act claims. (*Id.*) The Court dismissed defendant  
15 Nevada Board of Prison Commissioners, with prejudice, and defendants Howell, Tristan,  
16 and Jane and John Does 1-20, without prejudice. (ECF No. 4.)

17 Lagunas's Complaint alleges the following. In January 2017, Lagunas tested  
18 positive for Hepatitis C ("Hep C") while in prison. (ECF No. 4, 5.) Defendant Carrillo told  
19 Lagunas his APRI score was not high enough to be considered for treatment, which  
20 implied Lagunas would need to become sicker before qualifying for treatment. (ECF No.  
21 4, 5.) In March 2017, Lagunas submitted an informal grievance informing Defendants  
22 Dreesen and Carrillo that failing to treat his condition would cause continued damage to  
23 his liver. (*Id.*) Defendants issued a report stating the criteria listed in Medical Directive  
24 219, which relates to Hep C treatment, must be met for Lagunas to receive treatment.  
25 (*Id.*) Defendants told Lagunas in for his Hep C to be treated he must have: (1) an APRI  
26 score greater than 2.2; (2) sufficient time remaining on his sentence; and (3) he must  
27 display constitutional signs of Hep C. (ECF No. 5.)

1           Lagunas then submitted a First Level Grievance to medical regarding the  
2 Defendants subjecting Lagunas to unnecessary health risks. (ECF No. 4, 5.) Defendant  
3 Gutierrez responded that Lagunas's APRI score of 0.76 precluded him from receiving the  
4 cure but the NDOC would continue to monitor his labs. (*Id.*) Lagunas then submitted his  
5 Second Level Grievance informing the NDOC his APRI score was rising, and he was now  
6 experiencing rectal bleeding. (*Id.*) Aranas marked this grievance resolved and responded  
7 by stating that rectal bleeding is not a symptom of Hep C,<sup>4</sup> and Lagunas would be  
8 monitored every six months. (*Id.*) Aranas responded, "signs and symptoms of Hep C are  
9 the following[:] fatigue, nausea, loss of appetite, vomiting, ascites, and jaundice." (ECF  
10 No. 5 at 35.) Aranas's response noted Lagunas's rectal bleeding might be caused by  
11 another underlying disease and Lagunas should kite a doctor. (*Id.*)

12           Thereafter, Lagunas sent a kite in January of 2019, requesting the results of his  
13 blood test related to his Hep C. (ECF Nos. 5, 19.) Again, Lagunas was informed he was  
14 not considered for Hep C treatment at that time because of his APRI score, and his Hep  
15 C was "stable [and there] was no need for treatment at this time." (*Id.*) (see ECF No. 5 at  
16 27.) Lagunas then sent an informal, Level 1, and Level 2 grievances requesting treatment  
17 for his Hep C, and Defendants responded that Lagunas did not qualify for treatment and  
18 the NDOC would continue to monitor Lagunas's Hep C. (ECF Nos. 5, 19.)

19           On June 17, 2021, Defendants filed their motion for summary judgment. (ECF No.  
20 35.) Defendants assert they are entitled to summary judgment because: (1) Lagunas was  
21 treated appropriately and in accordance with the medical directives and standards of care;  
22 (2) Defendant Aranas and Pena were not Plaintiff's treating physician; (3) Lagunas has  
23 not been harmed by the alleged lack of treatment; (4) the members of the Board and  
24 former director are not in a position to respond to any changes in policy or procedure; (5)  
25 Defendants did not personally participate in any alleged constitutional violation; and (6)

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27           <sup>4</sup> The official response given on Lagunas's Level 1 Grievance stated, "So far, you  
28 have no jaundice, ascites and rectal bleeding." Implying that rectal bleeding is a symptom  
of Hep C. (ECF No. 5 at 33.)

1 Defendants are entitled to qualified immunity. (*Id.*)

## 2 **II. LEGAL STANDARD**

3 “The court shall grant summary judgment if the movant shows that there is no  
4 genuine dispute as to any material fact and the movant is entitled to judgment as a matter  
5 of law.” Fed. R. Civ. P. 56(a); *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). The  
6 substantive law applicable to the claim or claims determines which facts are material.  
7 *Coles v. Eagle*, 704 F.3d 624, 628 (9th Cir. 2012) (citing *Anderson v. Liberty Lobby*, 477  
8 U.S. 242, 248 (1986)). Only disputes over facts that address the main legal question of  
9 the suit can preclude summary judgment, and factual disputes that are irrelevant are not  
10 material. *Frlekin v. Apple, Inc.*, 979 F.3d 639, 644 (9th Cir. 2020). A dispute is “genuine”  
11 only where a reasonable jury could find for the nonmoving party. *Anderson*, 477 U.S. at  
12 248.

13 The parties subject to a motion for summary judgment must: (1) cite facts from the  
14 record, including but not limited to depositions, documents, and declarations, and then  
15 (2) “show [] that the materials cited do not establish the absence or presence of a genuine  
16 dispute, or that an adverse party cannot produce admissible evidence to support the fact.”  
17 Fed. R. Civ. P. 56(c)(1). Documents submitted during summary judgment must be  
18 authenticated, and if only personal knowledge authenticates a document (i.e., even a  
19 review of the contents of the document would not prove that it is authentic), an affidavit  
20 attesting to its authenticity must be attached to the submitted document. *Las Vegas*  
21 *Sands, LLC v. Neheme*, 632 F.3d 526, 532-33 (9th Cir. 2011). Conclusory statements,  
22 speculative opinions, pleading allegations, or other assertions uncorroborated by facts  
23 are insufficient to establish the absence or presence of a genuine dispute. *Soremekun v.*  
24 *Thrifty Payless, Inc.*, 509 F.3d 978, 984 (9th Cir. 2007); *Stephens v. Union Pac. R.R. Co.*,  
25 935 F.3d 852, 856 (9th Cir. 2019).

26 The moving party bears the initial burden of demonstrating an absence of a  
27 genuine dispute. *Soremekun*, 509 F.3d at 984. “Where the moving party will have the  
28 burden of proof on an issue at trial, the movant must affirmatively demonstrate that no

1 reasonable trier of fact could find other than for the moving party.” *Soremekun*, 509 F.3d  
 2 at 984. However, if the moving party does not bear the burden of proof at trial, the moving  
 3 party may meet their initial burden by demonstrating either: (1) there is an absence of  
 4 evidence to support an essential element of the nonmoving party’s claim or claims; or (2)  
 5 submitting admissible evidence that establishes the record forecloses the possibility of a  
 6 reasonable jury finding in favor of the nonmoving party. See *Pakootas v. Teck Cominco*  
 7 *Metals, Ltd.*, 905 F.3d 565, 593-94 (9th Cir. 2018); *Nissan Fire & Marine Ins. Co. v. Fritz*  
 8 *Cos.*, 210 F.3d 1099, 1102 (9th Cir. 2000). The court views all evidence and any  
 9 inferences arising therefrom in the light most favorable to the nonmoving party. *Colwell v.*  
 10 *Bannister*, 763 F.3d 1060, 1065 (9th Cir. 2014). If the moving party does not meet its  
 11 burden for summary judgment, the nonmoving party is not required to provide evidentiary  
 12 materials to oppose the motion, and the court will deny summary judgment. *Celotex*, 477  
 13 U.S. at 322-23.

14 Where the moving party has met its burden, however, the burden shifts to the  
 15 nonmoving party to establish that a genuine issue of material fact actually exists.  
 16 *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586, (1986). The  
 17 nonmoving party must “go beyond the pleadings” to meet this burden. *Pac. Gulf Shipping*  
 18 *Co. v. Vigorous Shipping & Trading S.A.*, 992 F.3d 893, 897 (9th Cir. 2021) (internal  
 19 quotation omitted). In other words, the nonmoving party may not simply rely upon the  
 20 allegations or denials of its pleadings; rather, they must tender evidence of specific facts  
 21 in the form of affidavits, and/or admissible discovery material in support of its contention  
 22 that such a dispute exists. See Fed. R. Civ. P. 56(c); *Matsushita*, 475 U.S. at 586 n. 11.  
 23 This burden is “not a light one,” and requires the nonmoving party to “show more than the  
 24 mere existence of a scintilla of evidence.” *Id.* (quoting *In re Oracle Corp. Sec. Litig.*, 627  
 25 F.3d 376, 387 (9th Cir. 2010)). The non-moving party “must come forth with evidence  
 26 from which a jury could reasonably render a verdict in the non-moving party’s favor.” *Pac.*  
 27 *Gulf Shipping Co.*, 992 F.3d at 898 (quoting *Oracle Corp. Sec. Litig.*, 627 F.3d at 387).  
 28 Mere assertions and “metaphysical doubt as to the material facts” will not defeat a

1 properly supported and meritorious summary judgment motion. *Matsushita Elec. Indus.*  
2 *Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586–87 (1986).

3 Upon the parties meeting their respective burdens for the motion for summary  
4 judgment, the court determines whether reasonable minds could differ when interpreting  
5 the record; the court does not weigh the evidence or determine its truth. *Velazquez v. City*  
6 *of Long Beach*, 793 F.3d 1010, 1018 (9th Cir. 2015). The court may consider evidence in  
7 the record not cited by the parties, but it is not required to do so. Fed. R. Civ. P. 56(c)(3).  
8 Nevertheless, the court will view the cited records before it and will not mine the record  
9 for triable issues of fact. *Oracle Corp. Sec. Litig.*, 627 F.3d at 386 (if a nonmoving party  
10 does not make nor provide support for a possible objection, the court will likewise not  
11 consider it).

### 12 **III. DISCUSSION**

#### 13 **A. Civil Rights Claims under 42 U.S.C. § 1983**

14 42 U.S.C. § 1983 aims “to deter state actors from using the badge of their authority  
15 to deprive individuals of their federally guaranteed rights.” *Anderson v. Warner*, 451 F.3d  
16 1063, 1067 (9th Cir. 2006) (quoting *McDade v. West*, 223 F.3d 1135 1139 (9th Cir. 2000)).  
17 The statute “provides a federal cause of action against any person who, acting under  
18 color of state law, deprives another of his federal rights[,]” *Conn v. Gabbert*, 526 U.S. 286,  
19 290 (1999), and therefore “serves as the procedural device for enforcing substantive  
20 provisions of the Constitution and federal statutes.” *Crumpton v. Gates*, 947 F.2d 1418,  
21 1420 (9th Cir. 1991). Claims under section 1983 require a plaintiff to allege (1) the  
22 violation of a federally protected right by (2) a person or official acting under the color of  
23 state law. *Anderson*, 451 F.3d at 1067. Further, to prevail on a § 1983 claim, the plaintiff  
24 must establish each of the elements required to prove an infringement of the underlying  
25 constitutional or statutory right.

#### 26 **B. Eighth Amendment Deliberate Indifference to Serious Medical Needs**

27 The Eighth Amendment “embodies broad and idealistic concepts of dignity,  
28 civilized standards, humanity, and decency” by prohibiting the imposition of cruel and

1 unusual punishment by state actors. *Estelle v. Gamble*, 429 U.S. 97, 102 (1976) (internal  
2 quotation omitted). The Amendment’s proscription against the “unnecessary and wanton  
3 infliction of pain” encompasses deliberate indifference by state officials to the medical  
4 needs of prisoners. *Id.* at 104 (internal quotation omitted). It is thus well established that  
5 “deliberate indifference to a prisoner’s serious illness or injury states a cause of action  
6 under § 1983.” *Id.* at 105.

7 Courts in this Circuit employ a two-part test when analyzing deliberate indifference  
8 claims. The plaintiff must satisfy “both an objective standard—that the deprivation was  
9 serious enough to constitute cruel and unusual punishment—and a subjective standard—  
10 deliberate indifference.” *Colwell v. Bannister*, 763 F.3d 1060, 1066 (9th Cir. 2014)  
11 (internal quotation omitted). First, the objective component examines whether the plaintiff  
12 has a “serious medical need,” such that the state’s failure to provide treatment could result  
13 in further injury or cause unnecessary and wanton infliction of pain. *Jett v. Penner*, 439  
14 F.3d 1091, 1096 (9th Cir. 2006). Serious medical needs include those “that a reasonable  
15 doctor or patient would find important and worthy of comment or treatment; the presence  
16 of a medical condition that significantly affects an individual’s daily activities; or the  
17 existence of chronic and substantial pain.” *Colwell*, 763 F.3d at 1066 (internal quotation  
18 omitted).

19 Second, the subjective element considers the defendant’s state of mind, the extent  
20 of care provided, and whether the plaintiff was harmed. “Prison officials are deliberately  
21 indifferent to a prisoner’s serious medical needs when they deny, delay, or intentionally  
22 interfere with medical treatment.” *Hallett v. Morgan*, 296 F.3d 732, 744 (9th Cir. 2002)  
23 (internal quotation omitted). However, a prison official may only be held liable if he or she  
24 “knows of and disregards an excessive risk to inmate health and safety.” *Toguchi v.*  
25 *Chung*, 391 F.3d 1050, 1057 (9th Cir. 2004). The defendant prison official must therefore  
26 have actual knowledge from which he or she can infer that a substantial risk of harm  
27 exists, and also make that inference. *Colwell*, 763 F.3d at 1066. An accidental or  
28 inadvertent failure to provide adequate care is not enough to impose liability. *Estelle*, 429



1 U.S. at 105–06. Rather, the standard lies “somewhere between the poles of negligence  
 2 at one end and purpose or knowledge at the other. . . .” *Farmer v. Brennan*, 511 U.S. 825,  
 3 836 (1994). Accordingly, the defendants’ conduct must consist of “more than ordinary  
 4 lack of due care.” *Id.* at 835 (internal quotation omitted).

5 Moreover, the medical care due to prisoners is not limitless. “[S]ociety does not  
 6 expect that prisoners will have unqualified access to health care. . . .” *Hudson v. McMillian*,  
 7 503 U.S. 1, 9 (1992). Accordingly, prison officials are not deliberately indifferent simply  
 8 because they selected or prescribed a course of treatment different than the one the  
 9 inmate requests or prefers. *Toguchi*, 391 F.3d at 1058. Only where the prison officials’  
 10 “‘chosen course of treatment was medically unacceptable under the circumstances,’ and  
 11 was chosen ‘in conscious disregard of an excessive risk to the prisoner’s health,’” will the  
 12 treatment decision be found unconstitutionally infirm. *Id.* (quoting *Jackson v. McIntosh*,  
 13 90 F.3d 330, 332 (9th Cir. 1996)). In addition, it is only where those infirm treatment  
 14 decisions result in harm to the plaintiff—though the harm need not be substantial—that  
 15 Eighth Amendment liability arises. *Jett*, 439 F.3d at 1096.

### 16 **C. Analysis**

17 Starting with the objective element, Defendants do not dispute that Lagunas’s Hep  
 18 C constitutes a “serious medical need.” Rather, Defendants argue that summary  
 19 judgment should be granted because Lagunas cannot establish the second, subjective  
 20 element of his claim. Specifically, Defendants argue they were not deliberately indifferent  
 21 to Lagunas’s condition. Under the subjective element, there must be some evidence to  
 22 create an issue of fact as to whether the prison official being sued knew of, and  
 23 deliberately disregarded the risk to Lagunas’s safety. *Farmer*, 511 U.S. at 837. “Mere  
 24 negligence is not sufficient to establish liability.” *Frost v. Agnos*, 152 F.3d 1124, 1128 (9th  
 25 Cir. 1998). Moreover, this requires Lagunas to “demonstrate that the defendants’ actions  
 26 were both an actual and proximate cause of [his] injuries.” *Lemire v. California*, 726 F.3d  
 27 1062, 1074 (9th Cir. 2013) (citing *Conn v. City of Reno*, 591 F.3d 1081, 1098- 1101 (9th  
 28 Cir. 2010), *vacated by City of Reno, Nev. v. Conn*, 563 U.S. 915 (2011), *reinstated in*



1 *relevant part* 658 F.3d 897 (9th Cir. 2011).

2 Here, Defendants submitted authenticated evidence regarding the medical  
3 treatment Lagunas received related to his Hep C. (See ECF Nos. 35-1, 35-12, 35-13, 37-  
4 2, 37-3.) According to Defendants' evidence, Lagunas spoke with a NDOC healthcare  
5 provider about his Hep C on at least five separate occasions.<sup>5</sup> (See ECF Nos. 37-2, 37-  
6 3.) Specifically, Defendants' evidence shows that Lagunas began speaking with  
7 healthcare providers at the NDOC about his Hep C on June 7, 2017.<sup>6</sup> (ECF No. 37-2.)  
8 Lagunas's APRI score was noted, and Lagunas's Hep C began being monitored at that  
9 time. (ECF No. 37-2 at 6.)<sup>7</sup> During this time, Lagunas was not provided Hep C drug  
10 intervention because Lagunas's APRI score and lack of symptoms did not qualify him for  
11 treatment under the NDOC policies at the time. (ECF Nos. 35-1, 35-10, 35-12.)  
12 Additionally, Defendants provided a declaration from current NDOC Medical Director, Dr.  
13 Michael Minev, stating, "Mr. Lagunas did not require drug intervention to treat his Hepatitis  
14 C at the time of his complaint due to his scores and lack of symptoms." (ECF 35-10.)

15 \_\_\_\_\_  
16 <sup>5</sup> Defendants have produced authenticated progress notes indicating, within the  
17 legible portions, that someone at the NDOC had spoken to Lagunas and had monitored  
18 Lagunas's Hep C on: June 7, 2017; October 10, 2018; September 23, 2019; November  
4, 2019; and April 16, 2020. (ECF Nos. 37-1, 37-2, 37-3.) There is no indication of who  
wrote the progress notes, i.e., a nurse, physician, or some other healthcare provider. (*Id.*)

19 <sup>6</sup> The progress notes that were produced by Defendants are largely illegible. (ECF  
20 No. 37-2.) However, there is a legible note from June 7, 2017, indicating that Lagunas  
was seen for Hep C.

21 <sup>7</sup> November 4, 2021: "[Inmate] has no jaundice, no foggy brain. . . ." "[Inmate] again  
22 educated about his APRI score. . . ." (ECF No. 37-2 at 2.)

23 September 23, 2019: "[Inmate] seen again for . . . Hep C. . . . [inmate] is again  
informed about his APRI. . . ." (ECF No. 37-2 at 3.)

24 October 10, 2018: "[I]nmate today for Chronic Clinic for Hep C." "[Inmate] is  
25 asymptomatic and the latest APRI score is 0.48." "Again [inmate] is reeducated about  
Hepatitis C, signs and symptoms and how to make his liver healthy. . . ." (ECF No. 37-2  
at 3.)

26 February 12, 2018: Lagunas did not show up for his Chronic Clinic for Hep C. (ECF  
27 No. 37-2 at 4.)

28 June 7, 2017: "[Inmate] seen today for Chronic Clinic on his Hep C." "[S]howed an  
APRI score of 0.76." (ECF No. 37-2 at 6.)

1 Therefore, Defendants have submitted evidence that establishes Defendants  
2 affirmatively monitored Lagunas's Hep C and Defendants have met their initial burden on  
3 summary judgment by showing the absence of a genuine issue of material fact as to the  
4 deliberate indifference claim. See *Celotex Corp.*, 477 U.S. at 325. The burden then shifts  
5 to Lagunas to produce evidence which demonstrates that an issue of fact exists as to  
6 whether Defendants were deliberately indifferent to his medical needs. *Nissan*, 210 F.3d  
7 at 1102.

8 Lagunas did not oppose the motion and did not submit any evidence in opposition  
9 to Defendants' motion. Therefore, Lagunas has failed to meet his burden on summary  
10 judgment to establish that prison officials were deliberately indifferent to his medical  
11 needs as he failed to come forward with any evidence to create an issue of fact as to  
12 whether Defendants deliberately denied, delayed, or intentionally interfered with the  
13 treatment plan. See *Hallett*, 296 F.3d at 744. Moreover, to the extent that Lagunas's  
14 assertions in this case are based upon his disagreement with Defendants' choice of  
15 treatment, this does not amount to deliberate indifference. See *Toguchi*, 391 F.3d at 1058.  
16 In cases where the inmate and prison staff simply disagree about the course of treatment,  
17 only where it is medically unacceptable can the plaintiff prevail. *Id.* Therefore, Lagunas  
18 has failed to show that the NDOC's "chosen course of treatment was medically  
19 unacceptable under the circumstances." *Id.* Accordingly, Lagunas fails to meet his burden  
20 to show an issue of fact that Defendants were deliberately indifferent to his needs  
21 because Lagunas has only shown that he disagrees between alternative courses of  
22 treatment, such as being given drug intervention treatment as opposed to having his Hep  
23 C monitored for progression. (See ECF Nos. 5, 19, 35-1, 35-10.)

24 Accordingly, the Court recommends Defendants' motion for summary judgment be  
25 granted.<sup>8</sup>

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27 <sup>8</sup> The Court does not address Defendants' personal participation or qualified  
28 immunity arguments because the Court finds that Lagunas's constitutional claim fails on  
the merits.

1 **IV. CONCLUSION**

2 For good cause appearing and for the reasons stated above, the Court  
3 recommends that Defendants' motion for summary judgment, (ECF No. 35), be granted.

4 The parties are advised:

5 1. Pursuant to 28 U.S.C. § 636(b)(1)(c) and Rule IB 3-2 of the Local Rules of  
6 Practice, the parties may file specific written objections to this Report and  
7 Recommendation within fourteen days of receipt. These objections should be entitled  
8 "Objections to Magistrate Judge's Report and Recommendation" and should be  
9 accompanied by points and authorities for consideration by the District Court.

10 2. This Report and Recommendation is not an appealable order and any  
11 notice of appeal pursuant to Fed. R. App. P. 4(a)(1) should not be filed until entry of the  
12 District Court's judgment.

13 **V. RECOMMENDATION**

14 **IT IS THEREFORE RECOMMENDED** that Defendants' motion for summary  
15 judgment, (ECF No. 35), be **GRANTED** and judgment entered accordingly.

16  
17 **DATED:** September 17, 2021

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21 **UNITED STATES MAGISTRATE JUDGE**  
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